

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Appellant,

v.

ALEJANDRO MORAN,

Defendant and Respondent.

F069672

(Super. Ct. No. P14900057)

**OPINION**

APPEAL from an order of the Superior Court of Fresno County. F. Brian Alvarez, Judge.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman, George M. Hendrickson and Larenda R. Delaini, Deputy Attorneys General, for Plaintiff and Appellant.

Heather MacKay, under appointment by the Court of Appeal, for Defendant and Respondent.

-ooOoo-

This is an appeal by the People of an order terminating respondent Alejandro Moran’s parole status. Appellant contends that the trial court did not have jurisdiction to issue such an order. Respondent offers a partial concession, acknowledging the trial court made a “misstatement in purporting to ‘terminate’ ” his parole, but argues the error

was harmless. Appellant satisfies the burden of establishing error and has persuasively refuted respondent's position. We therefore reverse and remand for any further proceedings that may be necessary.

### **STATEMENT OF THE CASE**

Respondent is a 31-year-old man who is well acquainted with the criminal justice system. According to the record, he has been convicted of at least 10 felony and misdemeanor offenses during his adult life. The matter before us traces back to a December 2007 conviction for buying or receiving a stolen vehicle or equipment (Pen. Code,<sup>1</sup> § 496d), which resulted in a 16-month prison sentence. He was released on parole in July 2008.

Respondent's performance on parole was extremely poor. During the period between September 2008 and January 2014, he absconded from parole supervision at least 10 times and was repeatedly found in possession of methamphetamine. As stated in his brief, "he was six times returned to custody to serve parole revocation terms."

On April 14, 2014, respondent appeared before the trial court on three matters: a new criminal case involving petty theft with prior felony convictions (former § 666); a petition for revocation of Proposition 36 probation; and a parole revocation petition based on seven different violations committed during February and March 2014. During the hearing, the parties advised that they had reached a negotiated plea deal on the pending charges. Respondent pleaded no contest to one count of felony petty theft and expressed his understanding that the conviction would result in him being found to have violated the terms of his probation and parole. The trial court accepted the plea, revoked probation and parole, and set a date for sentencing.

On May 12, 2014, respondent returned to court for sentencing and to be arraigned on a new drug possession charge. Defense counsel made the following statements before

---

<sup>1</sup> All further statutory references are to the Penal Code.

pronouncement of sentence: “[Mr. Moran] is requesting several things. The first thing is a two-year sentence with a split of one year in custody and one year [mandatory supervised release]. I believe Probation has provided the Court with the mandatory release dates. On the Prop 36 matter, however, he’s requesting that probation be terminated [as] unsuccessful with no further time. On the new matter, the People are dismissing in light of the sentence Mr. Moran is receiving. And on the parole matter, he’s requesting that parole be terminated.” The People did not respond to these comments.

For the petty theft conviction, the trial court imposed a split sentence<sup>2</sup> of two years, with one year to be served under mandatory supervision. With regard to the Proposition 36 probation revocation, the trial court elected to “deny reinstatement [] instead of terminating probation,” and imposed a two-year term to run concurrent with the split sentence. As to the parole matter, the court said, “I’ll order that your parole matter be terminated as unsuccessfully completed.” The People did not object to these dispositions.

On May 21, 2014, the People filed a motion to set aside the order terminating respondent’s parole. The moving papers asserted that the trial court “did not have jurisdiction to make any findings or orders terminating [respondent’s] parole status.” The motion was heard on June 16, 2014, at which time the trial court concluded it was powerless to grant the motion because the order in question had become final. (See *People v. DeLouize* (2004) 32 Cal.4th 1223, 1231 [“judicial error in the making of a final

---

<sup>2</sup> “A split sentence is a hybrid sentence in which a trial court suspends execution of a portion of the term and releases the defendant into the community under the mandatory supervision of the county probation department. Such sentences are imposed pursuant to Penal Code section 1170, subdivision (h)(5)(B)(i), a provision originally adopted as part of the ‘2011 Realignment Legislation addressing public safety.’ [], operative Oct. 1, 2011, as added by Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 1.)” (*People v. Camp* (2015) 233 Cal.App.4th 461, 464, fn. 1.)

order or judgment ‘may not be corrected except pursuant to statutory procedures’ or on the limited grounds available for a collateral attack.”].) The motion was denied, and this timely appeal of the May 12, 2014 order followed.

### **DISCUSSION**

“ ‘Parole is the conditional release of a prisoner who has already served part of his or her state prison sentence. Once released from confinement, a prisoner on parole is not free from legal restraint, but is constructively a prisoner in the legal custody of state prison authorities until officially discharged from parole.’ ” (*In re Taylor* (2015) 60 Cal.4th 1019, 1037.) Prior to California’s Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15, § 1), virtually all persons released from prison were subject to a period of parole administered by the state. (*People v. Isaac* (2014) 224 Cal.App.4th 143, 146, citing Stats. 2010, ch. 219, § 19.) Today, as a result of the Realignment Act, parole is reserved for “high-level offenders, i.e., third strikers, high-risk sex offenders, and persons imprisoned for serious or violent felonies or who have a severe mental disorder and committed specified crimes. (§ 3451, subd. (b).) All other released persons are placed on postrelease community supervision. (§ 3451, subd. (a).)” (*People v. Armogeda* (2015) 233 Cal.App.4th 428, 434.) Postrelease community supervision was created by the Realignment Act as an alternative to parole, and such supervision is conducted by a county agency rather than by the Department of Corrections and Rehabilitation. (*People v. Gutierrez* (2016) 245 Cal.App.4th 393, 399.)

“[O]ne of the major changes produced by the Realignment Act is the enhanced role of the superior court.” (*Dept. of Corrections & Rehabilitation v. Superior Court* (2015) 237 Cal.App.4th 1472, 1480.) The power to conduct parole revocation hearings has now shifted from the Board of Parole Hearings to the superior courts located in the county where the parolee is being supervised or the county in which a parole violation is alleged to have occurred. (*Ibid.*; § 3000.08, subd. (f).) To initiate parole revocation proceedings, the supervising parole agency must file a petition pursuant to

section 1203.2. (§ 3000.08, subd. (f).) If the superior court finds that the parolee has violated parole, it has the authority to “(1) Return the person to parole supervision with modification of conditions, if appropriate, including a period of incarceration in county jail[;] (2) Revoke parole and order the person to confinement in the county jail[;] or (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court’s discretion.” (§ 3000.08, subd. (f).) However, as noted by appellant, section 1203.2 states that a superior court “shall not terminate parole pursuant to this section.” (§ 1203.2, subds. (a), (b)(1).)

By statute, any person paroled from state prison prior to October 1, 2011, must remain under the supervision of the Department of Corrections and Rehabilitation until “(1) [j]urisdiction over the person is terminated by operation or law” or “(2) [t]he supervising agent recommends to the Board of Parole Hearings that the offender be discharged and the parole authority approves the discharge.” (§ 3000.09, subds. (a), (b)(1), (2).) According to one treatise, jurisdiction over this class of parolees was transferred to the individual counties on July 1, 2013, at which point “the superior court became the parole authority.” (California Criminal Law: Procedure and Practice (Cont.Ed.Bar 2016) Parole Hearings, § 47.4A, p. 1575, citing § 3056, subd. (b) and <http://www.cdcr.ca.gov/realignment/>.)

Assuming for the sake of argument that trial courts have the power to discharge or “terminate” the parole status of a person who was paroled from state prison prior to October 1, 2011 upon a recommendation by the supervising agency, those circumstances were not present in this case. The supervising agency petitioned for revocation of parole and recommended that respondent be returned to custody (i.e., confinement) for a period of 180 days. We thus conclude the trial court acted in excess of its authority under sections 1203.2 and 3000.08, subdivision (f), and had no factual or legal basis to order that respondent’s parole be “terminated as unsuccessfully completed.”

Respondent contends that the trial court's order was appropriate, or at worst harmless error, in light of section 3000.08, subdivision (k), which states: "Except as described in subdivision (c), any person who is convicted of a felony that requires community supervision and who still has a period of state parole to serve shall discharge from state parole at the time of release to community supervision." Appellant replies that section 3000.08, subdivision (k) is not applicable because respondent's split sentence on the petty theft conviction did not call for community supervision, but rather for "mandatory supervision." We need not resolve this debate because even if section 3000.08, subdivision (k) had the effect of eventually discharging respondent's parole by operation of law, respondent's parole status would have continued throughout the first part of his split sentence. The alleged applicability of that provision did not justify the early termination of parole on the date of the trial court's order.

Respondent also submits that any error by the trial court was harmless in light of the surrounding circumstances. The supervising agency had filed its petition for revocation on March 17, 2014, at which time respondent's controlling discharge date (i.e., the last possible date of his parole term) was determined to be February 9, 2015. In other words, respondent's parole term was set to expire in less than nine months when the challenged order was issued. Although the time during which a parolee absconds is not credited as part of the parole period (§§ 3064, 3000, subd. (b)(6)), respondent's parole period was unlikely to have been suspended prior to his controlling discharge date since he was immediately remanded into custody to begin serving the two-year split sentence.

Although the parties have not raised the question of mootness, we note respondent's maximum statutory period of parole has likely expired by now. (See § 3000, subds. (b)(2), (6).) The trial court's error may have been harmless as to respondent's interests, but appellant maintains that the challenged order affects the substantial rights of the People. (See § 1238, subd. (a)(5).) Since appellant has

affirmatively demonstrated error, we will reverse and remand for further proceedings as may be necessary and appropriate.

**DISPOSITION**

The trial court's May 12, 2014 order terminating Alejandro Moran's parole is reversed. The matter is remanded to allow for any further proceedings that may be necessary and appropriate under the controlling statutory authorities.

\_\_\_\_\_  
GOMES, J.

WE CONCUR:

\_\_\_\_\_  
HILL, P.J.

\_\_\_\_\_  
PEÑA, J.